



American Association of  
State Highway and  
Transportation Officials

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

David L. Winstead, President  
Secretary  
Maryland Department  
of Transportation

Francis B. Francois  
Executive Director

January 16, 1998

Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: Comments on CC Docket No. 98-1

Dear Mr. Secretary:

As directed by the AASHTO Board of Directors, I am submitting for filing in the above-identified docket a copy of our AASHTO Policy Resolution PR-8-97, which was adopted by unanimous vote of the AASHTO Board of Directors on April 25, 1997. The resolution expresses support for the Minnesota Department of Transportation's (Mn/DOT) request for an expedited declaratory ruling by the Federal Communications Commission to acknowledge that Mn/DOT's approach to private sector use of freeway right-of-way for fiber optic network installation is a proper exercise of authority, is consistent with the provisions and intent of the Federal Telecommunications Act of 1996, and is necessary to protect safety and traffic operations.

As is required, 12 copies of this letter and PR-8-97 are being submitted herewith.

Please contact me at 202-624-5800 if additional information is needed.

Very truly yours,

Francis B. Francois  
Executive Director

FBF:mlm

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As approved by the AASHTO Board of  
Directors on April 28, 1997

**POLICY RESOLUTION PR-8-97**

**Title: Support for Ruling by Federal Communications Commission  
In Support of Grant of Rights by Minnesota Department of  
Transportation to Install Fiber Optic Facilities  
on Freeway Rights-of-Way**

**WHEREAS**, by Resolution PR-21-95 adopted October 29, 1995, AASHTO revised its long maintained policy in opposition to longitudinal use of freeway rights-of-way to support longitudinal use of freeway rights-of-way for installing fiber optic cable, under appropriate guidelines which safeguard technical, operational, economic and financial aspects of freeway rights-of-way; and

**WHEREAS**, such Resolution recognizes that fiber optic technology is an important means to develop and enhance intelligent transportation systems; and

**WHEREAS**, intelligent transportation systems are an essential component of national and state strategies for maximizing safe and efficient use of freeways and highways in the future; and

**WHEREAS**, budgetary constraints on state departments of transportation require increasing reliance on private sector participation in the development and financing of intelligent transportation systems and other transportation improvements; and

**WHEREAS**, the Minnesota Department of Transportation ("MnDOT") seeks to enter into an agreement (the "MnDOT Agreement") with a private developer to develop and finance a statewide backbone fiber optic network to serve MnDOT's intelligent transportation systems and other state needs and to provide access and bandwidth to portions of the state that might otherwise never be served, in exchange for a limited exclusive right to use freeway right-of-way for longitudinally installing the fiber optic network; and

**WHEREAS**, MnDOT has determined that the grant of a limited exclusive right to longitudinal use of freeway rights-of-way for fiber optic cable is necessary and appropriate in order to protect the safety of the traveling public, minimize interference with the free movement of traffic and assure cost-effective maintenance of freeways; and

**WHEREAS**, Section 253(a) of the Telecommunications Act of 1996 (P.L. 104-104, 110 Stat. 56) (the "Act") prohibits state and local governments from enforcing statutes, regulations or other requirements which prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications service; and

**WHEREAS**, Section 253(c) of the Act nevertheless preserves the authority of state and local governments to manage public rights-of-way and to require fair and reasonable compensation from telecommunications providers on a competitively neutral and nondiscriminatory basis for use of public rights-of-way; and

**WHEREAS**, MnDOT intends to request a declaratory ruling from the Federal Communications Commission ("FCC") that the proposed MnDOT Agreement and grant of exclusive longitudinal use of freeway rights-of-way do not violate Section 253(a) of the Act; and

**WHEREAS**, the ruling by the FCC on MnDOT's request will have profound, nationwide impacts on the future ability of state departments of transportation to develop and finance intelligent transportation systems through innovative, shared resource agreements with the private sector like the MnDOT Agreement; and

**WHEREAS**, AASHTO desires to declare its support for MnDOT's proposed project and for a declaratory ruling validating the authority of state departments of transportation under Section 253(c) of the Act to grant exclusive longitudinal use of freeway right-of-way for fiber optic cable networks;

**NOW, THEREFORE, BE IT RESOLVED**, that the AASHTO Board of Directors declares its support for, and request, a prompt declaratory ruling by the FCC to the effect that the grant by MnDOT to a private developer of a limited exclusive right to use freeway right-of-way for the longitudinal installation of a fiber optic network, under circumstances where the private developer is obligated to charge uniform, nondiscriminatory rates to similarly situated network customer, (1) is a proper exercise of authority of state departments of transportation, preserved under Section 253(c) of the Act, to manage public rights-of-way and (2) does not violate Section 253(a) of the Act; and

**BE IT FURTHER RESOLVED**, that the AASHTO Board of Directors requests and directs AASHTO staff to submit to the FCC a letter of AASHTO's support for such a declaratory ruling.